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Introduction to the Special Issue: Reframing German Federalism

Abstract: In recent years, Germany's federal system has been subject to a number of pressures for change. A constitutional debate on 'disentangling' the legislative roles of federal and Länder institutions which stuttered through the 1990s and into the 2000s finally led to a re-allocation of competences in 2006. These reforms shifted some areas of legislative responsibility from the federal to the Länder level and relaxed rules which had earlier justified a federal override when both levels held legislative responsibilities concurrently. At the very least, these constitutional adjustments increased the *potential* for policy outputs to diverge from one Land to another and give expression to territorial differences in priority and preference.

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Introduction to the Special Issue: Reframing German Federalism

Charlie Jeffery, Niccole Pamphilis, Carolyn Rowe and Ed Turner

In recent years, Germany's federal system has been subject to a number of pressures for change. A constitutional debate on 'disentangling' the legislative roles of federal and Länder institutions which stuttered through the 1990s and into the 2000s finally led to a re-allocation of competences in 2006. These reforms shifted some areas of legislative responsibility from the federal to the Länder level and relaxed rules which had earlier justified a federal override when both levels held legislative responsibilities concurrently. At the very least, these constitutional adjustments increased the *potential* for policy outputs to diverge from one Land to another and give expression to territorial differences in priority and preference.

These changes to constitutional structure have unfolded in challenging political circumstances. Starting in 2009, Germany has found itself in a climate of profound economic unease, notably in its dealings with the fallout from the 2007 financial crisis in conjunction with the Eurozone crisis, and an increased public appetite within Germany for fiscal discipline. These circumstances led the 2006 reforms to be supplemented in 2009 by further reforms designed to tighten fiscal constraints around policy-making in the Länder, as well as at the national level. It is moot as to whether the effect of the 2009 reforms is to limit the scope for policy divergence created by the 2006 reforms (by removing budgetary scope Länder to pursue different patterns of spending) or to increase such scope, with increased fiscal self-reliance fostering new ideas on how to address public policy challenges.¹

Unsurprisingly the 2006 and 2009 reforms have triggered significant interest in their effects, in particular whether reform has prompted a growth in policy diversity among the Länder.² If so the prevailing narrative about the German federal system as one geared to producing uniformity of policy outcomes would have been upended. This special issue shares that interest – but stands back to explore the question of uniformity vs diversity in a different frame. That frame – a 'challenger' narrative perhaps – sees diversity as a persistent, but under-recognised aspect of the German federal system. In that view recent reforms are less a break with tradition and more a surfacing and confirmation of some of the underlying features of that system. We begin by setting out these alternative narratives before drawing out a set of questions from the contrast between them, and then discussing how the contributions to the special issue shed light on those questions.

¹ Heinz, Dominic (2016), 'Coordination in budget policy after the Second Federal Reform: Beyond Unity and Diversity', in *German Politics* 25/2 pp. XXX

² For instance, Hildebrandt, Achim / Wolf, Frieder (2008, eds.) *Die Politik der Bundesländer: Staatstätigkeit im Vergleich*, (Wiesbaden: VS Verlag); Achim Hildebrandt / Frieder Wolf (2016, eds.), *Politik in den Bundesländern: Zwischen Föderalismusreform und Schuldenbremse* (Wiesbaden: Springer VS Verlag); Tepe, Markus / Pieter Vanhuysse (2013), 'Cops for Hire? The Political Economy of Police Employment in the German States', *Journal of Public Policy* 33/2, pp. 165-199; von Blumenthal, Julia (2009) *Das Kopftuch in der Landesgesetzgebung: Governance im Bundesstaat zwischen Unitarisierung und Föderalisierung* (Nomos: Baden Baden), Turner, Ed / Rowe, Carolyn (2015), *Racing up, down or to the middle? Consequences of decentralisation in Germany* (London: Institute for Public Policy Research).

The unitary federal system: Germany's methodological nationalism

Research on German federalism has traditionally been bound by a powerful narrative of uniformity,³ which extends back to early postwar assessments (Wheare 1953),⁴ Hesse's (1962) depiction of a 'unitary federal state',⁵ the twin assessments in the mid-1970s by Scharpf⁶ of entangled policy-making and Lehmbruch⁷ of the integration of party competition across the federal and Länder levels, through to Abromeit's (1992) analysis of post-unification continuities,⁸ and Scharpf's (2008) more recent reaffirmation of Germany as a 'federal state with a unitary political culture'.⁹

This narrative focuses on the functional distribution of responsibilities in the German federal system, which gives the federal level responsibility for most legislation across policy issues in Germany and the Länder responsibility for implementing most of that legislation, the consequent close involvement of the Bundesrat in the federal legislative process, and a presumption of uniformity of policy standards available to all citizens irrespective of location. This view discounts the Länder as significant venues for autonomous policy-making, instead focusing on their 'entanglement' (*Verflechtung*) in statewide politics at the federal level. It often characterises politics in the Länder - not least the way parties compete and voters vote – as a subordinate reflection of federal-level politics.

That narrative has a strong normative foundation which reflects a series of nation-building claims which have taken on different forms in different eras. These claims are traceable back to the Bismarckian social welfare reforms, which were targeted not just at mitigating class conflict, but also to overcome the particularisms of the German states that combined into federation in 1871.¹⁰ Those claims were renewed after 1949 as a rallying cry of solidarity in postwar reconstruction and the integration of refugees and escapees from the east, and again after 1990 as a commitment to the integration of east Germans on a basis of equality with west Germans.¹¹ They chime with other narratives of modernisation and progress in the social sciences

³ Sturm, Roland (2010): 'More Courageous than Expected? The 2006 Reform of German Federalism', in Erk, Jan / Swenden, Wilfried (eds.), *New Directions in Federalism Studies* (London: Routledge), pp.34-49.

⁴ Wheare, Kenneth (1953): *Federal Government*, 3rd edition (Oxford: Oxford University Press).

⁵ Hesse, Konrad (1962): *Der unitarische Bundesstaat* (Karlsruhe: Müller)

⁶ Scharpf, Fritz W/ Reissert, Bernd / Schnabel, Fritz (1976): *Politikverflechtung. Theorie und Empiriedes kooperativen Föderalismus in der Bundesrepublik* (Kronberg: Scriptor).

⁷ Lehmbruch, Gerhard (1976): *Parteienwettbewerb im Bundesstaat* (Stuttgart: Kohlhammer).

⁸ Abromeit, Heidrun (1992): *Der verkappte Einheitsstaat* (Opladen: Leske und Budrich)

⁹ Scharpf, Fritz W. (2008): 'Community, Diversity and Autonomy: The Challenges of Reforming German Federalism', in *German Politics*, Vol. 17 / 4, pp. 509 – 21, here p. 510.

¹⁰ Manow, Philip (2005): 'Germany: Cooperative Federalism and the Overgrazing of the Fiscal Commons', in: Francis G. Castles, Stephan Leibfried and Herbert Obinger (Eds.): *Federalism and the Welfare State* (Cambridge: Cambridge University Press), pp. 222-262.

¹¹ Jeffery, Charlie (2009), 'Territoriale Politik, a-territoriale Wissenschaft und der deutsche Föderalismus 1949 – 2009', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2009* (Baden-Baden: Nomos), pp. 122-36.

which celebrated the achievement of democracy and welfare at the level of the nation-state and viewed the persistence of territorial distinctiveness within the state with suspicion as a pre-modern relic and/or a threat to equality and welfare across the state as a whole.¹² As Sturm put it in the German context, 'regional diversity seemed to be something obsolete, which had to be overcome'.¹³ Recent complaints following the 2006 federal reforms about territorial diversity as a recipe for a 'confusion of norms' ('*Normenwirrwarr*')¹⁴ or the 'Balkanisation' of policy¹⁵ suggest that this imagery persists, as do controversies about divergent policy frameworks in education policy¹⁶ or childcare.¹⁷

A strongly normative framing of the subject of social science analysis – in this case the German federal system – runs the risk of biasing methodological choices. In particular it has routinely led to the federal system being taken as a single unit of analysis, rather than, for example seeing the federal system as a composite of sixteen discrete units of analysis, comprised of the sixteen Länder. That choice of a single, system-wide unit of analysis – the 'unitary' federal system – lies behind work on German federalism of enduring brilliance, like that of Scharpf and colleagues on 'entangled' policy-making and Lehmbruch on a party system integrated across levels of government. But it also runs the risk of leaving other aspects of the federal system 'hidden from view'.¹⁸ To put it in more everyday terms, if you only look in one direction, you will not see the things visible in other directions.

This is not a methodological choice specific to the study of German federalism. It is one example of the kind of 'methodological nationalism' that Jeffery and Wincott (2010) identified as limiting the ways in which political science understands regional

¹² E.g. Marshall, T.H. (1992): 'Citizenship and Social Class', in Marshall, T.H. / Bottomore, Tom, *Citizenship and Social Class* (London: Pluto). Rokkan, Stein (1999): *State Formation, Nation-Building and Mass Politics in Europe* (Oxford: Oxford University Press).

¹³ Sturm, Roland (1999b), 'Der Föderalismus im Wandel. Kontinuitätslinien und Reformbedarf', in Jesse, Eckhard / Löw, Konrad (Eds.), *50 Jahre Bundesrepublik Deutschland* (Berlin: Duncker & Humblot, 1999), pp. 81-99, here p. 85.

¹⁴ Selmer, Peter (2009): 'Folgen der neuen Abweichungsgesetzgebung der Länder – Abschied vom Leitbild „gleichwertige Lebensverhältnisse“?', in: Baus, Ralf Thomas / Scheller, Henrik / Hrbek, Rudolf (Eds.), *Der deutsche Föderalismus 2020* (Baden-Baden: Nomos), pp. 46-56.

¹⁵ Schmid, Josef (2010): 'Die (mangelnde) Interdependenz in der Arbeitsmarkt- und Sozialpolitik im deutschen Föderalismus – von der Unitarisierung zur Balkanisierung', in: Oberhofer, Julia / Sturm, Roland (Eds.) (2010): *Koalitionsregierungen in den Ländern und Parteienwettbewerb* (München: Allitera), pp. 65-82.

¹⁶ Titz, Christoph / Leffers, Jochen (2010): 'Bildungsgipfel-Dreikampf: Vertagen, verschleppen, vertrösten', in *Der Spiegel*, 10th June 2010, available at <http://www.spiegel.de/unispiegel/studium/0,1518,699962,00.html> (accessed 1st Dec 2015).

¹⁷ Spiegel (2011): 'Kritik an Bundesländern: Schröder prangert mangelnden Kita-Ausbau an', in *Der Spiegel*, 9th October 2011, available at <http://www.spiegel.de/politik/deutschland/0,1518,790763,00.html>, accessed 1st December 2015.

¹⁸ Wimmer, Andreas, / Glick Schiller, Nina (2002): 'Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences', *Global Networks*, Vol. 2 / 4, pp. 301-34, here p. 302.

politics, especially within west European states.¹⁹ If, as for example Rokkan's work has often been (mis)-read, the nation-state is the scale at which 'progress' like stable democracy and comprehensive welfare policies have been achieved, we may be tempted to think of the state as a whole and its central political institutions not just as a more important unit of analysis than others, but 'better' than others because they have delivered 'progress'. Against that background a regional unit of analysis – such as a German Land – can easily be framed not just as less important, and so less worthy of study, but also a challenge to 'progress', at best, as Sturm put it, a problem to be overcome,²⁰ at worst the location of a damaging 'race to the bottom'.²¹ Moreover, if a particular unit of analysis is seen as more important and 'better', it is likely to be the focal point for data collection so that it can be known better. Other units of analysis without these advantages will tend to remain less knowable and in that sense 'hidden from view' due to a lack of available data.

We would, though, stress that these approaches – one focusing on the operation of the federal system as a whole, one of the individual Länder – can be complementary. Formal and informal arenas for joint decision-making in Germany (using the single, system-wide unit of analysis) remain necessary areas of consideration, as several contributions in this volume show (for instance, in the consideration of budgetary policy²² and prisons policy²³). But we contend that the 'sixteen-unit' perspective, taking the level of the individual Länder as its starting point, is essential in producing a more nuanced understanding of contemporary German politics.

Towards a Regional Political Science in Germany?

There is now ample evidence that regional-level politics in western Europe and beyond is really quite important; few would say as important as state-level politics but important nonetheless. There are now more regional-level political institutions now than, say, 40 years ago, they have far more policy responsibilities,²⁴ produce a growing diversity of policy outcomes at regional level, and are often focal points for distinct patterns of voting behaviour and party competition. For some, this can be the source of a 'race to the bottom' with regions competing to attract inward investment by cutting back social policy and other supposed 'burdens' on business.²⁵ A more optimistic scenario is that of a 'race to the top',²⁶ in which regions act as 'laboratories' of innovation,²⁷ with the innovative pioneers driving up standards,

¹⁹ Jeffery, Charlie & Wincott, Daniel (2010), 'The Challenge of Territorial Politics: Beyond Methodological Nationalism'. in Colin Hay (ed.), *New Directions in Political Science: Responding to the Challenges of an Interdependent World*. (Basingstoke: Palgrave Macmillan), pp. 167-188.

²⁰ Sturm, 'Der Föderalismus im Wandel'.

²¹ Peterson, Paul E. (1995): *The Price of Federalism* (Washington: Brookings Institution).

²² Heinz, 'Co-ordination in budget policy'.

²³ Turner, Ed / Rowe, Carolyn (2016): 'Let's stick together? Explaining boundaries to territorial policy variation: the case of Germany's prisons legislation', in *German Politics*, 25/2, pp. XXX.

²⁴ Marks, Gary / Hooghe, Liesbet / Schakel, Arjan H (2008): "Patterns of Regional Authority", in *Regional and Federal Studies* 18/2-3, pp. 167-81.

²⁵ Peterson, *The Price of Federalism*.

²⁶ Beer, Samuel H. (1998), 'Welfare Reform: Revolution or Retrenchment?', in: *Publius: The Journal of Federalism*, Vol. 28, pp. 9-15.

²⁷ Osborne, David (1988): *Laboratories of Democracy* (Boston: Harvard Business School Press).

either prompting others to emulate those standards,²⁸ or establishing alternative settings for (higher standards of) welfare protection, as is often claimed in Flanders, Quebec and Scotland.²⁹

Yet much of this work remains a niche preoccupation on the fringes of 'mainstream' political science with its emphasis on states, their national parliaments and governments and their relations with other states. Calls for the recognition of a 'regional political science'³⁰ are not yet widely heard.

Much the same can be said of German federalism and German political science – despite the existence and significance of work over the last thirty-plus years which has focused on innovation and difference in Länder politics³¹ and a welter of more recent work which has pinpointed Land-by-Land variations in parties and party systems,³² coalition formation,³³ voting behaviour,³⁴ parliamentarism,³⁵ systems of government,³⁶ models of democracy,³⁷ and public policy outcomes.³⁸ This more

²⁸ E.g. on the US, Karch, Andrew (2007), *Democratic Laboratories. Policy Diffusion among the American States* (Ann Arbor: University of Michigan Press); on Canada, Harrison, Kathryn (2006) (Ed.): *Racing to the bottom? Provincial Interdependence in the Canadian Federation* (Vancouver: UBC Press); on Spain, Costa-Font, Joan / Rico, Ana (2006): 'Devolution and the Interregional Inequalities in Health and Healthcare in Spain', in *Regional Studies*, Vol. 40 / 8, pp. 875-887.

²⁹ Beland, Daniel / Lecours, Andre (2008), *Nationalism and Social Policy* (Oxford: Oxford University Press); Keating, Michael (2009): 'Social Citizenship, Solidarity and Welfare in Regionalized and Plurinational States', in: *Citizenship Studies*, Vol. 13 / 5, pp. 501 - 513.

³⁰ Jeffery, Charlie / Schakel, Arjan H. (2013), 'Editorial: Towards a Regional Political Science', in *Regional Studies* 47/3, pp. 299-302.

³¹ Mintzel, Alf (1977): *Geschichte der CSU. Ein Überblick* (Opladen: Leske und Budrich); Schmidt, Manfred G (1980): *CDU und SPD an der Regierung: Ein Vergleich ihrer Politik in den Ländern* (Frankfurt: Campus). Benz, Arthur (1985): *Föderalismus als dynamisches System. Zentralisierung und Dezentralisierung im föderativen Staat* (Opladen: Leske und Budrich). Schmid, Josef (1990): *Die CDU. Organisationsstrukturen, Politiken und Funktionsweisen einer Partei im Föderalismus* (Opladen: Leske & Budrich); Götz, Klaus (1992): *Intergovernmental Relations and State Government Discretion: The Case of Science and Technology Policy in Germany* (Baden-Baden: Nomos); Jeffery, Charlie (1999): 'Party Politics and Territorial Representation in the Federal Republic of Germany', *West European Politics*, Vol. 22 / 2, pp. 130-66; Sturm, Roland (1999a): 'Party Competition and the Federal System: The Lehmbruch Hypothesis Revisited', in: Jeffery, Charlie (Ed.), *Recasting German Federalism. The Legacies of Unification* (London: Pinter), pp. 197-216.

³² Jun, Uwe / Haas, Melanie / Niedermayer, Oskar (Eds.) (2008): *Parteien und Parteiensysteme in den deutschen Ländern*, Wiesbaden: VS Verlag.

³³ Oberhofer, Julia / Sturm, Roland (Eds.) (2010): *Koalitionsregierungen in den Ländern und Parteienwettbewerb* (München: Allitera).

³⁴ Hough, Daniel / Jeffery, Charlie (2003): 'Landtagswahlen: Bundestestwahlen oder Regionalwahlen', *Zeitschrift für Parlamentsfragen*, Vol. 33 / 1, pp. 49-66; Völkl, Kerstin / Schnapp, Kai-Uwe / Holtmann, Everhard / Gabriel, Oscar W. (Eds.) (2008): *Wähler und Landtagswahlen in der Bundesrepublik Deutschland*, Baden-Baden: Nomos.

³⁵ Reutter, Werner (2008): *Föderalismus, Parlamentarismus und Demokratie* (Opladen: Leske und Budrich).

³⁶ Leunig, Sven (2006): *Die Regierungssysteme der deutschen Länder im Vergleich* (Opladen: Verlag Barbara Budrich).

³⁷ Freitag, Markus / Vatter, Adrian (2008) (Eds.): *Die Demokratien der deutschen Bundesländer: Politische Institutionen im Vergleich* (Opladen: Barbara Budrich);

recent work is a simple reflection of reality: after German unification in 1990 Germany became more diverse. As Schmidt notes in his conclusion to this volume, there are important drivers for diversity amongst the Länder: radically different demographic features (for instance, in levels of population age, ethnic diversity, or crime rates), variations in the level of economic development, the extent to which certain public services are received, and differences in fiscal capacity.³⁹ To that might be added, too, variation in important dimensions of public opinion.⁴⁰ That diversity is in key respects institutionalised in the Länder, it drives differences from Land to Land in voting behaviour, party competition and government formation, and differently constituted governments respond in different ways to the different circumstances different Länder face. Of course, diversity in the German system is not limitless – as Schmidt also highlights in his conclusion, there are important institutional constraints upon diversity. Moreover (as shown by Reus' contribution to this volume), there may be diffusion of particular policy choices from one Land to another – so that individual Länder end up choosing the same policy, whether prompted by costs of variation, public resistance or being won over by another Land's experience.

We might add, too, that there are ebbs and flows in Germany's appetite for policy diversity not only between different Länder (with prosperous, southern Länder likely to press for additional competencies than their counterparts, notably those in northern and eastern Germany), but also over time. The establishment of the commission on the reform of German federalism in 2003 perhaps marked the high-water mark of ambition for greater decentralisation, though the 2006 reforms resulting, after numerous twists and turns, from that commission's work fell some way short of a comprehensive reallocation of compromises.⁴¹ In the years thereafter, as an interviewee for a previous study by two of the authors contended (Interview with Margaretha Sudhof, 9th November 2011), the *Zeitgeist* had turned, with, in particular, the global financial crisis leading to concern about public debt (and ultimately to restrictions upon the ability of Land governments to borrow agreed in the 2009 federalism reforms). This changed *Zeitgeist* also led to a (modest) reversal of the 2006 decision to make Länder exclusively responsible for education policy, with the Basic Law being revised in December 2014, so that co-operation between the federal government and the Länder in higher education was once again possible.⁴² The refugee crisis being experienced at the time of writing (2015/6) has

³⁸ Hildebrandt and Wolf, *Die Politik der Bundesländer*; Hildebrandt and Wolf, *Politik in den Bundesländern*; Turner, Ed (2011): *Political Parties and Public Policy in the German Länder: When Parties Matter* (Basingstoke: Palgrave Macmillan).

³⁹ Schmidt, Manfred G (2016), 'Conclusion: Policy Diversity in Germany's Federalism', *German Politics* 25/2, pp. XXX

⁴⁰ Roller, Edeltraud (2015), 'Welfare State and Political Culture in Unified Germany', *German Politics* 24/3, pp. 292-316.

⁴¹ Turner, Ed / Rowe, Carolyn, "Party Servants, Ideologues or Regional Representatives? The German Länder and the Reform of Federalism", *West European Politics*, (2013), 36/2, pp. 382-404

⁴² Bundesministerium für Bildung und Forschung (2015), 'Kooperation von Bund und Ländern in Wissenschaft und Bildung', available at <https://www.bmbf.de/de/kooperation-von-bund-und-laendern-in-wissenschaft-und-bildung-77.html> (last accessed 01.02.2016).

also led to calls for the federal government to be given greater responsibility for policy.⁴³

Viewed against these ebbs and flows it may be most appropriate to summarise that German federalism is not, and arguably never has been, simply a complex system of coordination between different levels of government, but is *also*, and arguably always has been, a system which gives the Länder some capacity to respond to territorially distinctive views among their electorates and pursue distinctive policy priorities – *both* perspectives are indispensable in studying the whole. Yet the traditional narrative of uniformity continues to dominate today, even after the recent federalism reforms;⁴⁴ that dominance risks disguising Germany's territorial distinctiveness.

Challenging the Uniformity Narrative

The purpose of this special issue is both to test that narrative, and explore the extent to which it can be complemented with an analysis focused at the level of the individual Länder. The contributions address three kinds of question. The first concerns the extent to which the German federal system, as well as a locus of policy entanglement in statewide policy-making, is also a locus for distinctive policies in the German Länder. We do not reject the view that Germany has a highly integrated federal system. But we do suggest that this is an incomplete view of the German federal system. There is substantial evidence over decades of significant territorial policy variation between the Länder, for example in regional economic policy,⁴⁵ or, as Schmidt showed in his seminal study of whether parties 'make a difference', because different election victors choose to do different things with the policy levers at their disposal,⁴⁶ or as the more recent collection assembled by Wolf and Hildebrandt has shown, because different Länder have different structural characteristics and respond to issues differently.⁴⁷ So how much difference and diversity has there been alongside the conventional picture of integration and uniformity?

Second, there have been substantial recent reforms in 2006 and 2009. So what impact have they had on territorial policy variation in the Länder? The 2006 reforms awarded the Länder a range of new exclusive powers and opened up in some areas the right of the Länder to deviate from federal legislative standards. These changes in principle – and as some small case studies have shown already in practice – open

⁴³ Mitteldeutsche Zeitung (2015), 'Die Fehler des Föderalismus', 23rd September 2015, *Mitteldeutsche Zeitung*, available at <http://www.mz-web.de/politik/kommentar-zur-fluechtlingskrise-die-fehler-des-foederalismus-22777546> (last accessed 01.02.2016).

⁴⁴ Burkhart, Simone (2008): *Blockierte Politik. Ursachen und Folgen von 'Divided Government' in Deutschland* (Frankfurt: Campus); Scheller, Henrik / Schmid, Josef (Eds.) (2008): *Föderale Politikgestaltung im deutschen Bundesstaat. Variable Verflechtungsmuster in Politikfeldern* (Baden-Baden: Nomos); Scharpf, Fritz W. (2009): *Föderalismusreform. Kein Ausweg aus der Politikverflechtungs-falle?* (Frankfurt: Campus).

⁴⁵ Sturm, Roland (1989), 'The Industrial Policy Debate in the Federal Republic of Germany', in: Bulmer, Simon (Ed.): *The Changing Agenda of West German Public Policy* (Aldershot: Gower), pp. 155-174; Götz, Klaus (1992): *Intergovernmental Relations and State Government Discretion: The Case of Science and Technology Policy in Germany* (Baden-Baden: Nomos)

⁴⁶ Schmidt, *CDU und SPD an der Regierung*.

⁴⁷ Hildebrandt and Wolf, *Die Politik der Bundesländer*, pp. 363-6.

up further scope for distinctive Länder policies.⁴⁸ However, the fiscal constraints agreed in the 2009 reforms may have a dampening effect on policy autonomy by reducing the budgetary room for manoeuvre of the Länder, and seeing a levelling-down of service provision. So what is the overall effect?

Third, if we recognise patterns of variation in both longer and shorter terms, what are their systemic implications? If the Länder are racing anywhere, is it to the bottom or the top in terms of standards? Or is their capacity to 'race' in any direction still limited by institutional constraints imposed by the formal structure of the federal system, by continuing integrative roles played by political parties, or by public opinion - widely understood as suspicious of policy variation.⁴⁹ To put this a different way, do features of the federal system that promote statewide uniformity stand in tension with those promoting Land-level diversity in some kind of zero-sum relationship? Or are there two 'faces' of German federalism in which practices favouring uniformity are pursued in some fields and are complemented by practices favouring diversity in others?⁵⁰

The contribution by Jeffery and Pamphilis address these questions head on by presenting data on policy outcomes which show that, at least for the last 20 years, uniformity of policy outcomes have not been achieved, alongside what they describe as 'paradoxical' public attitudes on policy variation: citizens appear to want their Länder to have greater policy responsibilities – but not to use them to pursue diversity of policy outcomes.⁵¹ In this sense citizens themselves may enact distinct 'faces' of German federalism.

The clearest indication as to the shape of contemporary German federalism can be found through direct analysis of decision making and the ability of multiple tiers of governmental authority to shape policies. To that end, this Special Issue draws

⁴⁸ Kinzig, Jörg / Steinhilber, Benjamin (2008): 'Der Strafvollzug in der Hand der Bundesländer', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2008* (Baden-Baden: Nomos) pp. 188-203; Rahm, Christian (2008): 'Die Umsetzung der Föderalismusreform I am Beispiel des öffentlichen Wohnungsrechts in Bayern', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2008* (Baden-Baden: Nomos) pp. 204-215; Haug, Volker (2010): 'Besser als ihr Ruf – die Föderalismusreform I im Hochschulbereich', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2010* (Baden-Baden: Nomos) pp.176-87; Münch, Ursula (2010): 'Föderale und parteipolitische Interdependenzen bei schulpolitischen Innovationsprozessen', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2010* (Baden-Baden: Nomos), pp. 188-99; Hoymann, Tobias / Münch, Ursula (2011): 'Föderalismusreform 1969: Warum die Länder ihre Hochschulgesetzgebungskompetenz dem Bund überliessen und in der Föderalismusreform 2006 (teilweise) wieder zurückholten', in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2011* (Baden-Baden: Nomos), pp. 205-220.

⁴⁹ ADD REFS HERE.## Wintermann, Ole / Petersen, Thieß (2008), *Bürger und Föderalismus. Eine Umfrage zur Rolle der Bundesländer* (Gütersloh, Bertelsmann Stiftung); Grube, Norbert (2009): 'Nähe und Distanz: Föderale Einstellungen der Bevölkerung in 60 Jahren Bundesrepublik Deutschland' in: Europäisches Zentrum für Föderalismus-Forschung (Ed.): *Jahrbuch des Föderalismus 2009* (Baden-Baden: Nomos), pp. 149-160.

⁵⁰ Jeffery, Charlie / Rowe, Carolyn (2014), 'The Reform of German Federalism', in Padgett, Stephen / Paterson, William / Zohlhöfer, Reimut, *Developments in German Politics 4* (Basingstoke: Palgrave Macmillan), pp.

⁵¹ Jeffery, Charlie / Pamphilis, Niccole (2016), 'The Myth and Paradox of Uniform Living Conditions in the German Federal System', *German Politics* 25/2, pp. XXX.

together sets of analyses of the initial impact of the 2006 and 2009 reforms to the allocation of competence within the federal system. The contribution by Hildebrandt and Wolf takes issue with the expectation of “racing” dynamics within the new architecture of German federalism. The authors focus on two key areas of policy which were central to the reform negotiations: higher education policy and environmental policy. The shift in competences post 2006/9 are assessed here in the context of expectations of intensified policy competition. Their findings are illustrative of the enduring strength of the state-wide political culture in these particular policy fields, with its embedded preferences for state-wide policy outcomes and normative dislike of variation. This, the authors argue, supports an interpretation of the German federal system simply as a ‘dynamic federalism’, where incremental changes are commonplace, iterative and constant in the federation’s history.⁵²

Reus, in her investigation of the legislation at Land level on smoking bans in public places, suggests that potential scope for divergence in policy-making at the Land level was not realised – owing primarily to the development of a state-wide public preference for full scale bans on smoking alongside demand for uniformity. This led to the striking uniformity of outcome which we see, despite initial political approaches to drafting differential legislation in line with particular ideological positioning on the issue. The key differences which have emerged are to be found in the details of that regulation, as Reus explains. Reus also makes the important point that public opinion and Germany’s media (perhaps in a symbiotic relationship) may also individual Länder away from the path of radical policy variation towards similar choices.⁵³

Turner and Rowe examine the area of prisons policy, which was passed to the Länder in the 2006 reforms.⁵⁴ It was a politically contentious area, with the many opponents of the change (particularly numerous amongst academics, practitioners and specialists in the political parties) fearful of a ‘competition of harshness’, as well as arbitrary and damaging policy incoherence. The picture which emerges is of no such ‘race to the bottom’, with relatively modest differentiation in some Länder, driven often by party priorities and to some degree by features of the territory in question. Moreover, the Länder displayed vastly different levels of interest in revisiting previous, federal laws, with those who had pressed for reform (such as Bavaria and Baden-Württemberg) rushing to legislate, and others showing no such appetite for variation. Nonetheless, Turner and Rowe also point to long-standing variations the implementation of prisons policy, predating the 2006 reform and their acquisition of legislative competence. Thus, a focus on politics below the national level remains important in this area.

In his analysis of the multi-level coordination of budget policy in Germany, Heinz takes further this investigation into the *potential* for divergent Land-level approaches to policy making, versus the reality of how the new powers afforded to the Länder by the 2006/9 reform have in fact played out.⁵⁵ Heinz concludes that shared expertise

⁵² Hildebrandt, Achim / Wolf, Frieder (2016), ‘How much of a sea change? Land policies after the reforms of federalism’, *German Politics* 25/2, pp. XXX

⁵³ Reus, Iris (2016), ‘The Länder on a successful road to “new federalism”? The case of smoking bans after Germany’s federalism reform’, *German Politics* 25/2, pp. XXX

⁵⁴ Turner / Rowe, ‘Let’s stick together?’.

⁵⁵ Heinz, ‘Coordination in budget policy’.

encouraged the Länder to develop a common mechanism on crisis avoidance, but that at the level of individual budgetary policy-making, the Länder have continued to diverge in their legislative approaches.

Shifts at the level of the political system are also core to our understanding of the new German federalism that is emerging in the wake of the 2006/9 reforms. Two contributions to this Special Issue take forward an analysis of how a new federal system of governance has implications for real politics in action, namely party competition and voter behaviour. In his contribution, Klaus Detterbeck illustrates how party politics has been reshaped by the federal reforms' creation of new arenas for autonomous Länder policy making. At an organisational level, we would expect there to be some demonstrable impact on the parties themselves following the shift in the locus of policy-making. What Detterbeck forcefully demonstrates here, however, is the deep-rooted inertia within the party organisations themselves. This has effectively hamstrung the development of new organisational models which could and would adapt to the new opportunities for policy-shaping which the federal reforms have opened up.⁵⁶

In her analysis of voter behaviour at the Land and the federal level, Kerstin Völkl also powerfully makes the case for a narrative of German federalism that sees the 2006/9 reform not as a hiatus, but rather as a marker of political intent.⁵⁷ The tangible impact of the federal reforms is, at the level of voter choice, marginal. Instead, we find that federal considerations do tend to impact upon voter choice, but there are variations in the extent to which they matter, depending in particular in which parties are in government at the federal, and the Land, level.

Overall, then, the conclusion of this special issue points to a substantial degree of nuance, a theme taken up by Manfred G. Schmidt in the conclusion to this volume.⁵⁸ Schmidt's contribution highlights the areas where increasing policy diversity can be found in the German federal system, but through analysis of areas where an increase in policy *convergence* – that is, *decreasing* policy variation - can be identified, seeks to identify the key factors which can determine these policy developments.

What this volume shows is that those who anticipated that the federalism reforms of 2006 and 2009, as well as Germany's growing inequalities, would lead to an American-style competitive federalism being 'let rip', with a vast divergence in policies between the Länder, will be disappointed. In some areas, modest pressures for increased divergence can be discerned, but a normative commitment to co-ordination and a broad similarity of policies across the territory can be discerned. Similarly, the party system has not been 'regionalised', although the changed circumstances of the German polity can certainly be discerned there, and Land-level elections remain influenced by the national context. However, variations between the Länder most certainly exist – as they always have done – in their policies as well

⁵⁶ Detterbeck, Klaus (2016), 'Party Inertia amid Federal Change? Stability and Adaptation in German parties', *German Politics* 25/2, pp. XXX.

⁵⁷ Völkl, Kerstin (2016), 'State elections in German federalism: Does federal or state influence predominate?', *German Politics* 25/2, pp. XXX

⁵⁸ Schmidt, 'Conclusion'.

as their political institutions, and an understanding of German federalism simply as being a process of national co-ordination, with the Länder just as administrative units, while never being persuasive is now, most certainly, outmoded. Germany's federal system clearly remains in flux, and (at the very latest after negotiations on fiscal federalism at the end of this decade) the questions addressed in this volume will need to be kept under close review.